

CHICAGO TITLE COMPANY

RECORDING REQUESTED BY:
Jefferson at Marina del Rey, L.P.,
5796 Armada Drive, Suite 300
Carlsbad, CA 92008

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201-2205
Attention: Sayareh Amir, Chief
Site Mitigation Branch

09/25/07



20072207505

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

13

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: Jefferson at Marina del Rey Site, County of Los Angeles Parcel Nos. 4229-004-052, 4229-004-053, and 4229-004-054, Jefferson at Marina del Rey, Site Code 301282)

This Covenant and Agreement ("Covenant") is made by and between Jefferson at Marina del Rey, L.P. the ("Covenantor"), the current owner of property situated in the City of Los Angeles, County of Los Angeles, State of California, described in Exhibit "A", which is attached and incorporated by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence under the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25395.99 that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I STATEMENT OF FACTS

1.01. The Property, totaling approximately 5.8 acres, is more particularly described and depicted in Exhibit "A". The Property is located in the area now generally bordered by Carter Avenue on the east, Princeton Drive on the south, Thatcher Avenue and single family residential homes fronting Thatcher Avenue on the west and single family residential homes fronting Berkley Drive on the north. The Property is located at 3211, 3217-3221 & 3237 Carter Avenue; and 3224-3226 Thatcher Avenue, City of Los Angeles, Los Angeles County, State of California. The Property is also generally described as Los Angeles County Assessor's Parcel Nos. 4229-004-052, 4229-004-053, and 4229-004-054.

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1.02. Restrictions apply to the entire Property. The Property is currently vacant land and is proposed to be developed with multi-family homes with no privately owned or maintained yards.

1.03. The Property has been remediated in accordance with an approved Response Plan prepared pursuant to the Health and Safety Code section 25395.94 (b) and (c). The Department circulated the Response Plan and a Notice of Exemption, prepared to document that the project was exempt from the provisions of the California Environmental Quality Act, Public Resources Code section 21000 et seq. for public review and comment. The Response Plan and the Notice of Exemption were approved by the Department on January 29, 2007.

1.04. The Response Plan calls for the execution of an Operation and Maintenance Agreement that requires financial assurance for and implementation of an Operation and Maintenance Plan for both soil management and groundwater monitoring to evaluate residual levels of volatile organic compounds. The final remedy for soil contained in the Response Plan includes provisions for the preparation and Department approval of an Operation and Maintenance Plan which includes requirements for future soil management to ensure the protection of human health and safety and the environment. The final remedy for groundwater contained in the Response Plan includes 1) installation of a monitoring well network on and near the Property; 2) groundwater monitoring for volatile organic compounds and total dissolved solids to evaluate trends in groundwater quality, and; 3) recordation of a land use covenant that restricts the extraction and use of groundwater at the Property. A site map showing the location of the groundwater monitoring wells is attached as Exhibit "B".

1.05. As detailed in the Human Health Risk Assessment, potential human exposure to chemicals remaining in soil, soil gas and groundwater at the Property were evaluated. The Department concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unreasonable threat to human safety if limited to a condominium or other multi-family development with no privately owned or maintained yards.

1.06. Groundwater at the Property was found at approximately 7 to 11 feet below ground surface. Site groundwater investigation indicated elevated concentrations of benzene (720 ug/L) tetrachloroethene (PCE, 44 ug/L) and trichloroethene (TCE, 7.8 ug/L). Based on the California drinking water standards, the Department concluded that the groundwater should not be used as a source of drinking water.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities located on the Property.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions, that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section **25395.99** and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all Owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive Owners of the Property are expressly bound hereby for the benefit of the Department; provided however, that Owners/Occupants are not responsible for any obligations and/or breaches of those obligations arising subsequent to their ownership/occupancy unless they caused or contributed to such a breach.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee written notice of the existence of this Covenant and its Environmental Restrictions.

3.04. Incorporation into Deeds and Leases. This Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, mortgages, liens, easements and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. If condominium interests in the Property are sold, this requirement may be satisfied, as to conveyance of those interests, by maintenance of a registry of all such owners by a home owners association, provided that the home owners association notifies the Department that it is maintaining a registry of owners and will provide a copy to the Department upon request. The Department shall not, by reason of this Covenant, have the right or the authority to approve, disapprove, or otherwise affect a proposed conveyance.

3.06. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for itself and for all subsequent Owners that the Owner agrees to pay the Department's costs in administering this Covenant. If condominium interests in the Property are sold, a home owners association may pay these costs on behalf of all Owners.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes;

- (a) Single family residences (but condominiums/townhomes or other multi-family developments with no privately owned or maintained yards are not a prohibited use).
- (b) A hospital for humans.
- (c) A public or private school for children.
- (d) A day care center for children.

4.02. Soil Management

- (a) No activities that will disturb the soil below one foot above the water table (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property. This requirement has already been satisfied for activities to be conducted pursuant to the Department approved Response Plan.
- (d) In the event of an emergency or exigent circumstances, notice may be provided to the Department within seven (7) days after such necessary action is taken.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops).;
- (b) Drilling for water (other than groundwater monitoring wells), oil, or gas, without prior written approval by the Department.
- (c) Extraction of groundwater for purposes other than site monitoring or remediation without prior written approval by the Department.

4.04. Non-Interference with Groundwater Monitoring Wells. The Groundwater Monitoring System will be composed of 13 groundwater monitoring wells located on Exhibit B:

- (a) Activities that may disturb, alter, damage, or destroy the Groundwater Monitoring Wells shall not be permitted on the Property without prior review and approval by the Department.
- (b) All uses and development of the Property shall preserve the integrity and physical accessibility of the Groundwater Monitoring Wells.
- (c) The Groundwater Monitoring Wells shall not be altered without written approval by the Department.
- (d) Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Groundwater Monitoring Well(s); and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any person falling within the definition of Owner or Occupant shall satisfy this requirement on behalf of all persons falling within the definition of Owner and Occupant.

4.05. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.06. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance set forth in the Jefferson at Marina Del Rey Site Operation and Maintenance Agreement Docket No. HSA-O&MEA 06/07-202 or a subsequent Operation and Maintenance Agreement entered into by the Department for the Property, shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance until the Department determines that no further Operation and Maintenance is required.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant may be grounds for the Department to seek, if appropriate, modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, the submission of any false statement, record or report to the Department, may be grounds for the Department to pursue administrative, civil or criminal actions.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02 Termination or Modification. Owner, or any other aggrieved person, may apply to the Department for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Los Angeles within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Jefferson at Marina del Rey, L.P.
5796 Armada Drive, Suite 300
Carlsbad, CA 92008
Attn: Heidi W. Mather

With a copy to;

Elizabeth E. Mack, Esq.
Locke, Liddell and Sapp LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776

and

To Department:

Sayareh Amir, Chief
Southern California Cleanup Operations Branch - Glendale Office
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, CA 9120

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

7.07 Inspection and Reporting Requirements. The Owner shall conduct an annual visual inspection to determine if there are any violations of the restrictions set forth in Article IV of this Covenant and submit an annual report to the Department for its approval by January 15th of each year. The annual report, which may be in the form of a letter, must include the dates, times, and names of those who conducted and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, fly over, walk in, etc.) If violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within ten days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant and demand that the violation cease immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Department within ten (10) days of its original transmission.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Jefferson at Marina del Rey, L.P,
a Delaware limited partnership

By: Jefferson at Marina del Rey LLC,
a Delaware limited liability company,
its general partner

By: Heidi W. Mather
Title: Heidi W. Mather, Area Vice President

Date: 8/3/07

Department of Toxic Substances Control

By: Sayareh Amir
Title: Sayareh Amir, Chief
Southern California Cleanup Operations Branch - Glendale Office

Date: 8/10/07

EXHIBIT A

PARCEL ONE:

LOT 1 OF TRACT NO. 62062, IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1331 PAGES 88 AND 89 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

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ASSESSOR'S MAP

View Enlarged Map

View Printing Instructions

County of Los Angeles: Rick Auerbach, Assessor

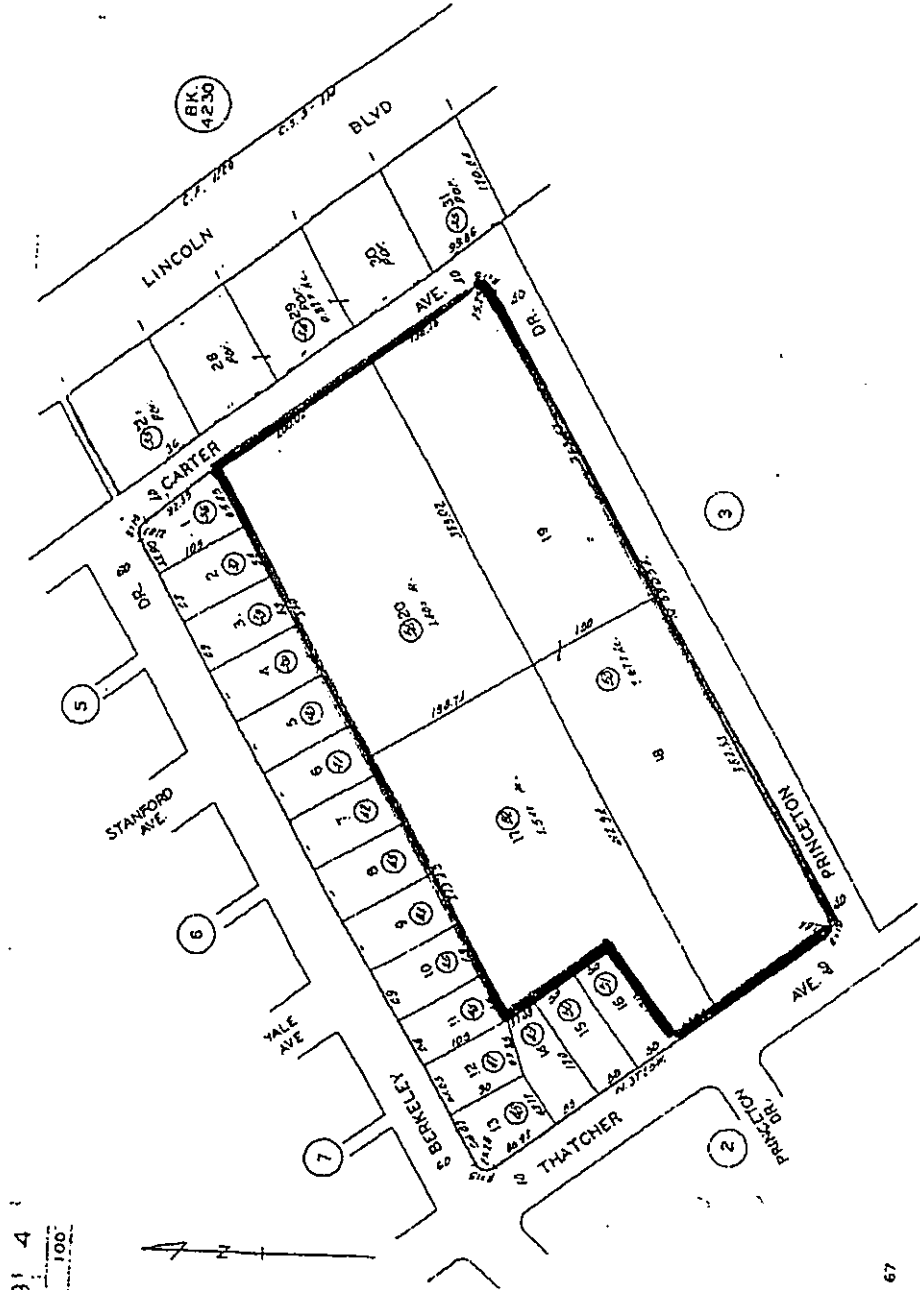
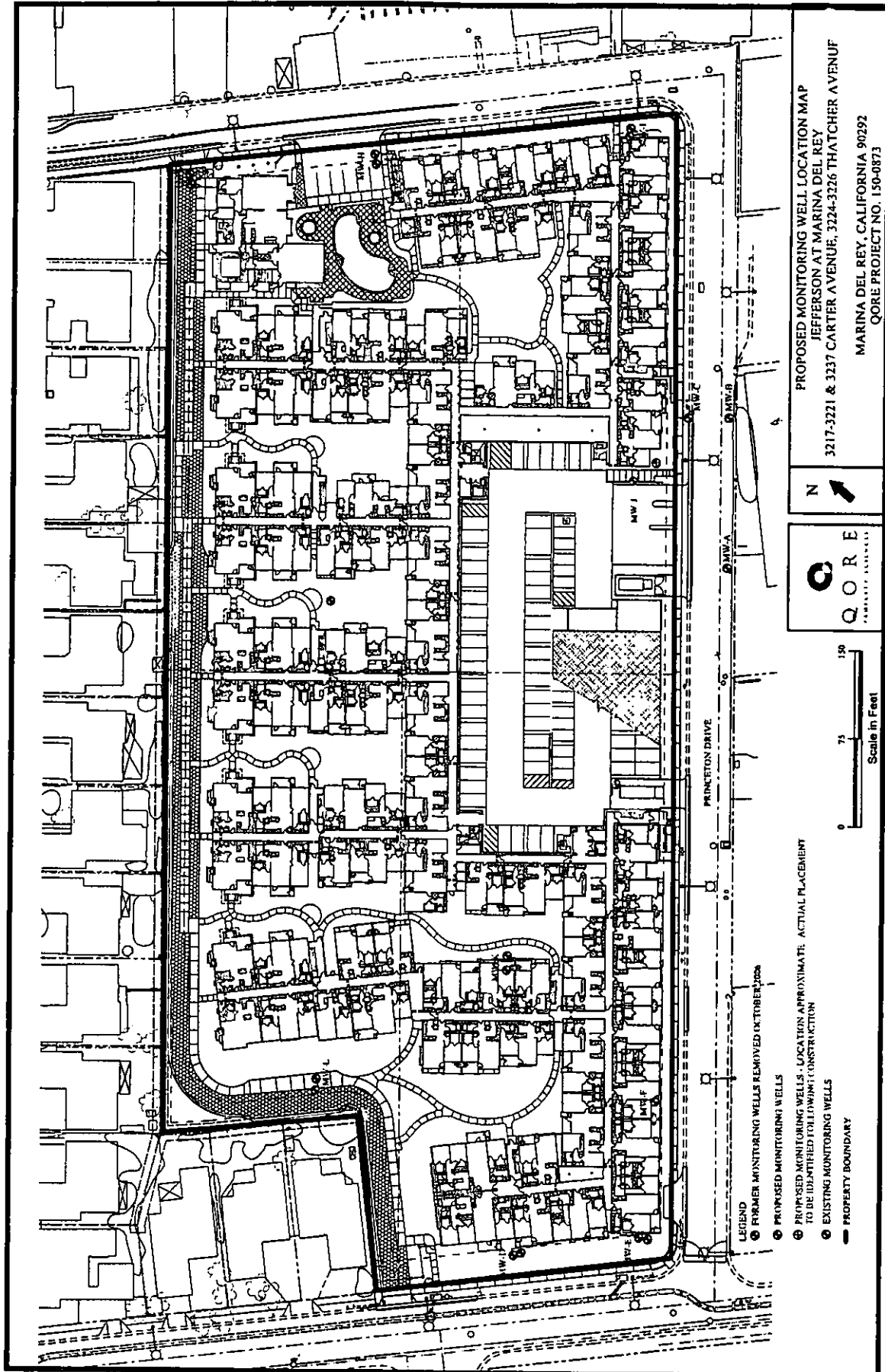


FIGURE 4A - TAX ASSESSOR PARCEL NUMBER MAP
JEFFERSON AT MARINA DEL REY

QORE PROJECT 150-0873

EXHIBIT B (Map of Groundwater Monitoring Wells)



STATE OF CALIFORNIA

COUNTY OF

San Diego

On this

3rd

day of

AUGUST

,

in the year

2007

before me

Dianne SAKREKOFF, Notary Public,

personally appeared

Heidi W. MATHER

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is ~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~~~she~~~~they~~ executed the same in ~~his~~~~her~~~~their~~ authorized capacity(ies), and that by ~~his~~~~her~~~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,

Signature

Dianne Sakrekoff



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Los Angeles

SS.

On September 24, 2007 before me, Tracy Lynn Grair, notary public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Sayareh Amirebrahimi,
Name(s) of Signer(s)

☐ personally known to me
☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Tracy Lynn Grair
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

